

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA, <i>ex rel.</i>)	
ROGER CHARLES DAY, JR.)	
)	Civil No. 3:23-cv-371-REP
Plaintiff,)	
)	
v.)	
)	
BOEING, <i>et al.</i> ,)	
)	
<u>Defendants.</u>)	

UNITED STATES' RESPONSE TO RELATOR'S
RENEWED MOTION TO VACATE ORDER OF DISMISSAL

After intervening in the action, and upon the motion of the United States, by Order entered November 30, 2023, the Court dismissed the complaint. Dkt. 14.

Following the entry of the dismissal Order, Relator moved to vacate pursuant to Fed. R. Civ. P. 60(b) as Relator had not filed a response to the government's motion. Importantly, Relator advanced arguments on both excusable neglect *and* arguments regarding dismissal under the False Claims Act, 31 U.S.C. § 3730(c)(2)(A), the provision governing dismissals of *qui tam* actions.

Relator's reconsideration motion was denied by the Court "because the Relator has not, in the moving papers or briefs, shown a meritorious defense. A meritorious defense is a threshold necessity for relief under Fed. R. Civ. P. 60(b) and a motion seeking relief under that rule 'requires a proffer of evidence which would permit a finding for the defaulting party.' *Augusta Fiberglass Coatings, Inc. v. Fodor Contracting Corp.*, 843 F.2d 808, 812 (4th Cir. 1988)." Dkt.

No. 20. The Court said that any renewed motion for reconsideration would need to be filed by February 21, 2024.

On February 21, 2024, the Relator filed a Renewed Motion to Vacate. (Dkt No. 21).

The Renewed Motion does not contain any information, evidence or argument that was not contained in Relator's original motion for reconsideration. (Dkt No. 16). Relator's renewed motion simply restates the arguments contained in his original motion for reconsideration Dkt Nos. 17 & 19. In short, there is no new information, and the Relator has failed to make a showing required by the Court's January 23, 2024, Order.

CONCLUSION

For the foregoing reasons, the Renewed Motion for reconsideration should be denied.

Dated: March 1, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March 2024, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Elliott M. Harding, Esquire
Harding Counsel, PLLC
1260 Clifden Greene
Charlottesville, Virginia 22901
Email: elliott@hardingcounsel.com

And I hereby certify that I will mail the document by United States mail, first-class postage prepaid, to the non-filing user addressed as follows:

/s/ _____
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